

Memo urges lawyers' silence

Amendment opponents worry that visibility could hurt chances

By TERRY MAXON

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As Texas Trial Lawyers Association leaders were planning its campaign against a constitutional amendment capping malpractice awards, they concluded that it would be best if lawyers didn't deliver the message.

The strategy was outlined in a June e-mail message sent to some of the group's members, a copy of which was released to the news media by proponents of the amendment.

Association spokesman Willie Chapman defended the strategy of keeping lawyers as invisible as possible in the campaign on Wednesday, saying that the Trial Lawyers Association didn't want Texans to pay more attention to the messenger than the message.

"We have known for a long time that the most effective messengers on justice issues are consumer groups, legal scholars, judges, people who have been involved in the system personally — consumers with compelling stories," Mr. Chapman said.

"We want those stories to be out there and not be overshadowed by lawyers," he said.

Rossanna Salazar, a spokeswoman for the Yes on 12 campaign, criticized the opponents' strategy.

"Judging from this document, some of Texas' most powerful personal injury lawyers and their lobbying group met secretly to devise a strategy to keep the public in the dark

about their management of the campaign against Proposition 12," Ms. Salazar said.

"This memo gives the public an actual look inside the campaign against Prop 12 and what clearly is an attempt to hide the fact that some personal injury lawyers are really in the driver's seat," she said.

What's at stake

Proposition 12, one of 22 constitutional amendments on a Sept. 13 statewide ballot, would allow the Legislature to cap noneconomic damages awarded in medical malpractice cases and to put similar caps on other types of cases after Jan. 1, 2005.

Proponents say that the amendment is necessary to protect doctors, hospitals and other health care professionals and organizations, which have seen rapidly increasing insurance premiums for medical malpractice coverage.

Opponents criticize the amendment as harming citizens' constitutional right to Texas courts to recover damages and for shifting power from courts, judges and juries to elected officials.

The effort to defeat Proposition 12 has been led by Save Texas Courts, an organization headed by former Texas Supreme Court justice Deborah Hankinson and run by Dallas public relations firm Allyn & Co.

Its funding has come

almost exclusively from lawyers, but a diverse collection of consumer groups, including AARP, Common Cause, Public Citizen and Texas Watch, is also fighting the amendment.

Pushing Proposition 12 is Yes on 12, funded almost entirely by doctors, hospitals, other medical groups and business groups and directed by Delisi Communications of Austin. Save Texas Courts maintains that the insurance industry and health maintenance organizations are the real force behind the proposed amendment.

Mr. Chapman said he didn't know who wrote the June memo, but he confirmed that such a memo was circulated.

The memo discusses the approach drawn up by top Trial Lawyers Association officials to defeat the proposition and emphasizes the need to use non lawyers to spread the message.

"To make this program work we must vow to not communicate with the public media or in a public forum at all regarding the amendment election," the memo advised.

"NO LAWYERS - NO EXCEPTIONS. This cannot be a lawyers v. doctors campaign. With the way the opposition has postured their campaign, all we need to do is speak publically [sic] to kill our cause."

The memo also urged all lawyers to quit advertising on television until the election "if not forever," saying that the advertising was "damaging our profession."

"The ads that say 'abc lawyer got me \$90k and I wasn't even hurt' are devastating to, and will kill, our cause in this election," the memo said. "You know who you are."

Issue vs. profession

Mr. Chapman said the Texas Trial Lawyers Association doesn't embrace the advertising ban, saying it's not proper for the group to decide whether lawyers should advertise their services. But he did acknowledge that some people don't like lawyers, and that the association wants voters to concentrate on the issue, not the profession.

"I think there are certainly probably a fringe of people out there who have knee-jerk reactions on some issues and some may have knee-jerk reactions to lawyers," he said.

"I would like to think that more of the public would look to protecting their own family's lives and how Prop 12 could affect them personally and not see it as a way to lash out at the legal profession," Mr. Chapman said.